



STATE OF ARKANSAS
**Department of Finance
and Administration**

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October 26, 2006

V. Dexter Doyne
Doyne Construction Company, Inc.
P.O. Box 5820
719 North Main St.
North Little Rock, AR 72119

RE: Request for Ark. Code Ann. § 19-11-715 Waiver
Advisory Opinion #483-06-14

Dear Mr. Doyne:

This letter is in response to your written request for a waiver pursuant to Ark. Code Ann. § 19-11-715(c), which states that the Director may grant an employee a written waiver from the application of § 19-11-705, which refers to employee conflicts of interest. You state the following facts:

The State Facilities Acquisition Act (codified as Ark. Code Ann. § 22-3-1401 et seq.) allows Arkansas Building Authority (ABA) and its Council to acquire facilities, lands, and equipment for use by other state agencies through the use of Arkansas Department of Finance Authority (ADFA) bonds.

Arkansas Department of Environmental Quality (ADEQ) requested use of the facilities acquisition act to construct ADEQ's headquarters in North Little Rock.

In February 2005, the Arkansas Building Authority Council (Council) met. I am the Chairman of the ABA Council and requested a motion for the approval of the funding for the ADEQ project, which was approved by a unanimous vote of the Council.

The resolution specifically authorized the construction of the facility through the use of the ADFA bonds not to exceed 25 million. Under the arrangement, ADFA would lease the project to ABA, who would in turn sublease the project to ADEQ. It is contemplated that ADEQ will take full ownership of the project upon retirement of the bonds.

On July 1, 2005, an Alternative Delivery Construction contract authorized by Ark. Code Ann. § 19-5-1415 et seq. was negotiated and entered into between ADEQ and Nabholz Construction Company (Nabholz). Under the Alternative Delivery law, ADEQ had *sole authority* to select the contractor, Nabholz Construction Company.

ABA, nor its Council, had any rights or responsibilities with respect to the selection of Nabholz.

Under Alternative Delivery contracts, ABA has the sole authority to approve the method of contracting, advertisements, site selections, funding reviews, plans/specifications, conducting on-site observations, maintain project files and change orders. The Council has no authority over these contracts.

Pursuant to Executive Order 98-04, proper disclosure was provided to DFA that Nabholz had awarded my company, Doyne Construction Company, a subcontract. This subcontract was awarded after a competitive bid process was conducted by Nabholz.

Pursuant to Ark. Code Ann. § 19-11-715(c), the Director may grant a waiver or permission to proceed with a transaction that may otherwise involve an ethical conflict when the interests of the state so require or when the ethical conflict is insubstantial or remote. Based upon the facts involved in this case, there are several reasons why a waiver is appropriate. First, it does not appear that a conflict arising under Ark. Code Ann. § 19-11-705 exists. A conflict exists if a public employee participates directly in any matter in which the employee or the employee's company has a financial interest. The only matter in which you participated as the ABA Council Chairman was the approval of the funding for the ADEQ project. You did not participate, as defined in Ark. Code Ann. § 19-11-705, in the subsequent selection of Nabholz as the contractor for the project, or in Nabholz's selection of Doyne Construction as a subcontractor for the project.

Second, a waiver would be in the state's best interests. It is notable that the ABA Council's membership consists of contractors, design professionals (architects and engineers), businessmen, attorneys, and property developers. The make-up of the membership is critical as these members may share their expertise as it relates to all aspects of real estate, construction, building operations and design elements. Therefore, a waiver is hereby granted, and the transaction should be allowed to proceed.

This advisory opinion is issued in accordance with Ark. Code Ann. § 19-11-715 and compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Act and Executive Order 98-04.

Sincerely,

Richard Weiss
Director

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